

NTSB Order No. EA-5088

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 9th day of April, 2004

Respondent .

the Administrator for dismissal of an untimely appeal respondent, by counsel, had taken from a November 25, 2002 order of the Administrator that suspended respondent's airframe-powerplant mechanic certificate for 180 days for his alleged violations of sections 43.5(b), 43.13 (a) and (b), and 43.15(a)(1) of the Federal Aviation Regulations ("FAR", 14 C.F.R. Part 43). We will deny the appeal.

The law judge held that the respondent, who personally signed for a certified copy of the Administrator's November 25th order at his residence on December 2nd, had not shown that he could not, through the exercise of due diligence, have filed an appeal with the Board by December 15th, when the 20-day time limit for doing so expired.² See Rule 821.30(a). The law judge observed that

[a]s to any inability he claims for his failure to file a timely appeal after receiving the order, respondent has neither provided the precise dates of his hospitalizations nor shown how he was so incapacitated throughout the thirteen day period from December 2 to December 15 that he was unable to either file an appeal on his own behalf or communicate to his counsel his desire to appeal (Order at 3).

Finding no good cause for the failure to file the appeal on time, (
..continued)
expressly address or contemplate this set of circumstances. Nevertheless, as it appears in this instance that the postmark is the more reliable evidence of the actual date of filing, we will disregard the date on the certificate.

²In reply to the Administrator's motion to dismiss, the respondent, by counsel, asserted that he had "been hospitalized on several occasions during the fall and winter of 2002-2003. As a matter of fact, at least one hearing in another matter had to be moved because of Respondent's repeated hospitalizations. He finally underwent surgery for a hip replacement, and required some follow-up hospitalization" (Brief in Response at 1).

the law judge dismissed the appeal on the Administrator's motion.³

Respondent makes no effort in his brief to show that the law judge erred in concluding that good cause for the late appeal had not been shown.⁴ In fact, respondent essentially concedes that the law judge's decision is consistent with our precedent. He takes the position, nevertheless, that the Board should apply a less stringent standard in his case; namely, one of excusable neglect, a standard he believes the Board followed prior to 1983. Aside from the fact that respondent's brief presents no reason to turn back the clock, other than that it would benefit him, we do not agree that respondent has demonstrated that his neglect in filing a timely appeal was excusable.

None of the details concerning the timing or duration of the respondent's medical circumstances during the month of December 2002 can be discerned from his reply to the Administrator's motion to dismiss.⁵ As a result, no judgment could be reached as

³The respondent's appeal was not filed until December 26th, eleven days out of time.

⁴Respondent's brief suggests that he may have mistakenly believed that the due date ran from his date of receipt of the order of suspension. Not only would such an error not provide good cause under Board precedent, it would make no difference in this case since respondent's appeal was filed more than 20 days after he received the Administrator's order. Respondent also asserts that while he does not remember when he received the order of suspension, he is sure that "he was in the hospital on the day it arrived in the mail" (Appeal Brief at 2). This statement appears to conflict with respondent's acknowledgement that he personally signed for the order when it was delivered to his residence.

⁵We assume that information concerning specific dates would

to whether respondent's hip surgery had any bearing on his ability to have filed a timely appeal.⁶ Nor, for that matter, could it reasonably be said on this record that his medical situation would have so dominated his attention during the relevant timeframe that he should be excused for not taking the few minutes necessary to attend to a matter he now claims is important enough to warrant Board review, notwithstanding his essentially unexplained failure either to act in a timely manner or in one consistent with a serious intent to protect his certificate rights.

ACCORDINGLY, IT IS ORDERED THAT:

1. The decision of the law judge is affirmed;
2. The respondent's appeal is denied; and
3. The 180-day suspension of respondent's airframe-powerplant mechanic certificate shall begin 30 days after the service date indicated on this opinion and order.⁷

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

(..continued)

have been readily available from the hospital where respondent was treated, had he not been able to remember his admission dates a month later when the reply to the motion to dismiss was filed.

⁶We also fail to appreciate the relevance, either to the issue of good cause or excusable neglect, of the fact that respondent's counsel's father-in-law died a week after he received, when the appeal was already late, the suspension order the respondent forwarded to him.

⁷For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(g).